

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SBU GROUP LP d/b/a
APOLLO DISTRIBUTORS,
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§
vs.
OHIO CASUALTY INSURANCE
COMPANY Civil Action No. 4:21-cv-01628
(JURY)

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Ohio Casualty Insurance Company timely files this Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1332(a), and 28 U.S.C. §1446(b), removing this action from the 152nd Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and in support thereof show as follows:

A. Introduction

1. Plaintiff commenced this lawsuit against Defendant in the 152nd Judicial District Court of Harris County, Texas by filing its Original Petition on or about March 18, 2021. A true and correct copy of the Original Petition is attached hereto as Exhibit "A." Plaintiff served the Original Petition on Defendant Ohio Casualty Insurance Company on April 19, 2021. A true and correct copy of Defendant's Answer to Plaintiffs' Original Petition, Defendant's Special Exceptions, and Defendant's Jury Demand filed on May 7, 2021 is attached hereto as Exhibit "B."

2. Defendant is filing this Notice of Removal within 30 days of their first receipt of Plaintiff's Original Petition as required by 28 U.S.C. § 1446(b).

3. Plaintiff seeks to recover damages in this lawsuit based on allegations of breach of contract, bad faith claims, and violations of the Texas Insurance Code resulting from the alleged conduct of Defendant. Plaintiff's claims arise under a policy of insurance on Plaintiff's commercial properties issued by Defendant Ohio Casualty Insurance Company. Plaintiff's properties are located in Harris County, Texas, and are alleged to have been damaged during wind and hail storms.

B. Jurisdiction & Removal

4. In a removal situation, the burden is on the removing party to establish the existence of jurisdiction and the propriety of removal. *Manguno v. Prudential Property and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1332, in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00. Accordingly, statutory authority for the removal of this matter is conferred by 28 U.S.C. §§ 1441 and 1446.

5. Complete diversity under 28 U.S.C. § 1332 exists in this case. Plaintiff is located in the State of Texas. Ohio Security Insurance Company is a company organized under the laws of the State of New Hampshire and the principal place of business is in Boston, Massachusetts. As such, for diversity purposes, Ohio Casualty is a citizen of Massachusetts. §1332(c)(1).

6. In addition, the amount in controversy meets the minimum jurisdictional requirements under 28 U.S.C. § 1332. Here, Plaintiff's Original Petition states that they are seeking monetary relief of over \$250,000.00 (See Paragraph 7). Therefore, the amount in controversy exceeds \$75,000.00.

7. Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in this district and division.

8. Contemporaneous with the filing of this Notice of Removal, Defendant is filing a Notice of Filing Notice of Removal with the Clerk of Court for the 152nd Judicial District Court of Harris County, Texas pursuant to 28 U.S.C. § 1446(d).

9. Attached hereto are all documents required by 28 U.S.C. § 1446(a).

10. Defendant demanded a jury in the state court action. Defendant also requests a trial by jury pursuant to Rule 81(c)(3)(A), Federal Rules of Civil Procedure.

11. All fees required by law in connection with this Notice have been tendered and paid by Defendant.

WHEREFORE, Defendant Ohio Casualty Insurance Company hereby removes the above-captioned matter now pending in the 152nd Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

SHEEHY, WARE & PAPPAS, P.C.

By: /s/ J. Mark Kressenberg

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**ATTORNEYS FOR THE DEFENDANT
OHIO CASUALTY INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing instrument has been forwarded via e-filing in accordance with the Federal Rules of Civil Procedure on this the 17th day of May, 2021 to the following counsel of record:

Eric B. Dick, LL.M.
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/s/ J. Mark Kressenberg

J. Mark Kressenberg

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